(2)

No. 89-1932

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

SCOTT A. SEALEY, a minor, by and through his guardian ad litem, Carl Sealey, CARL SEALEY and DELORES SEALEY,

Petitioners,

v.

TOYOTA MOTOR CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oregon

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Oregon product liability statute of ultimate repose, ORS 30.905(1), violate the equal protection clause of the Fourteenth Amendment?

2. Does the Seventh Amendment right to jury trial apply to a civil action filed in state court where state law provides that no cause of action exists?

LIST OF PARTIES and RULE 29.1 LIST

The parties to the proceedings below were the petitioner, Scott Sealey, a minor, by and through his guardian ad litem, Carl Sealey, Delores Sealey, Carl Sealey, and respondent, Toyota Motor Corporation.

Respondent Toyota Motor Corporation has no parent company. Subsidiaries (other than wholly-owned subsidiaries) are:

New United Motor Manufacturing, Inc.,
Toyota Technical Center U.S.A., Inc.,
Calty Design Research, Inc.,
Toyota Motor Manufacturing U.S.A., Inc.
Toyota Industrial Equipment Manufacturing, Inc.
Toyota Canada, Inc.
Ensambladora Centroamericana de Costa Rica S.A.
Toyota del Peru S.A.
Tomen Transportgerate GmbH
Salvator Caetano I.M.V.T., S.A.R.L.
Toyota Motor Corporation Australia Ltd.
United Australian Automotive Industries Ltd.
P.T. Toyota-Astra Motor
Toyota Motor Philippines Corp.
Fung Yong Co., Ltd.
Kuozui Motors, Ltd.
Toyota Motor Thailand Company Limited
Siam Toyota Manufacturing Co., Ltd.
DCM Toyota Ltd.
Toyoda Automatic Loom Works, Ltd.
Aichi Steel Works, Limited
Toyoda Machine Works, Ltd.
Toyota Auto Body Co., Ltd.
Toyota Tsusho Corporation
Aisin Seiki Co., Ltd.
Nippondenso Co., Ltd.
Toyoda Boshoku Corporation

LIST OF PARTIES and
RULE 29.1 LIST – Continued

Towa Real Estate Co., Ltd.
Toyota Central Research & Development Laboratories, Inc.
Kanto Auto Works, Ltd.
Toyoda Gosei Co., Ltd.
Hino Motors, Ltd.
Daihatsu Motor Co., Ltd.

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v.

TOYOTA MOTOR CORPORATION,

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On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Oregon

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Toyota Motor Corporation (hereinafter "TMC"), respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Oregon Supreme Court's decision in this case. That decision is reported at 309 Or. 387, 788 P.2d 435 (1990).

JURISDICTION

The judgment of the Oregon Supreme Court was entered on March 6, 1990, affirming the Oregon Court of Appeals judgment in favor of respondent. The petition for writ of certiorari does not allege a statutory basis for jurisdiction of this Court to review the judgment by writ of certiorari.

STATEMENT OF THE CASE

On April 23, 1986, Scott Sealey (hereinafter "petitioner"), was a minor passenger in a 1975 Toyota Landcruiser manufactured by TMC. The driver, defendant Erik Hicks, lost control of the vehicle and crashed. Petitioner was seriously injured.

Petitioner, acting through his guardian ad litem, filed a complaint on August 27, 1986. The defendants were Hicks, Toyota Motor Distributors, and respondent TMC. On July 29, 1987, over eleven months after the complaint was filed, petitioner served TMC with the complaint.[1]

TMC moved for summary judgment, claiming that the action was time barred by reason of ORS 30.905(1),[2] Oregon's product liability statute of ultimate repose. That statute provides that a product liability civil action shall

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[1] Under Oregon law, commencement of the action against TMC was not deemed begun until the complaint was filed and served. ORS 12.020(1).

[2] The complete text of ORS 30.905 is set forth in the Appendix.

be commenced "not later than eight years after the date on which the product was first purchased for use or consumption." TMC presented uncontested evidence that the vehicle was first purchased for use or consumption in May 1975, over twelve years before the action was commenced against TMC. The only other evidence submitted to the trial court was an affidavit of petitioner's attorney stating that an un-named expert would testify that the Landcruiser was dangerously defective.

The trial court held that the action was barred by ORS 30.905(1) and granted summary judgment in favor of TMC. Petitioner appealed, contending that ORS 30.905(1) violated several provisions of both the state and federal constitutions. The Oregon Court of Appeals upheld both the constitutionality and applicability of the statute. *Sealey v. Hicks*, 95 Or.App. 182, 768 P.2d 428 (1989). Petitioner petitioned for review by the Oregon Supreme Court, which affirmed the Court of Appeals. *Sealey v. Hicks*, 309 Or. 387, 788 P.2d 435 (1990).

Petitioner's Petition for Writ of Certiorari contains repeated references to what is purportedly the legislative history of ORS 30.905(1). (Petition for Cert., pp. 5-6, 8, 12, 14.)[3] These references are not supported by the record and should not be considered by this Court.

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[3] References to the Petition for Writ of Certiorari are noted hereafter as "Petition for Cert." followed by the appropriate page number.

REASONS FOR DENYING THE WRIT

I.

THIS COURT HAS PREVIOUSLY DETERMINED THAT A PRODUCT LIABILITY STATUTE OF ULTIMATE REPOSE DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Petitioner asks this Court to decide whether ORS 30.905, Oregon's product liability statute of ultimate repose, violates the equal protection clause of the Fourteenth Amendment to the United States Constitution. Certiorari should be denied because this Court has already determined that a statute of repose does not violate the Fourteenth Amendment. *Pullum v. Cincinnati, Inc.*, 475 U.S. 1114, 106 S.Ct. 1626, 90 L.Ed.2d 174 (1986).

In *Pullum*, the Florida Supreme Court rejected an equal protection attack on Florida's statute of ultimate repose. *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla.1985). Pullum appealed to this Court.[4] One of the questions presented on appeal was whether the Florida statute violated the equal protection clause of the Fourteenth Amendment. See 54 U.S.L.W. 3654, 3655 (U.S. April 1, 1986) for summary of questions presented on appeal. This Court dismissed the appeal for want of a substantial federal question. *Pullum v. Cincinnati, Inc.*, 475 U.S. 1114, 106 S.Ct. 1626, 90 L.Ed.2d 174. Summary disposition by the Supreme Court of an appeal for want of a substantial federal question is a disposition on the merits of the case.

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[4] At that time, 28 U.S.C. § 1257(2) provided for review of such cases by appeal rather than by writ of certiorari. Congress amended § 1257 in 1988. Pub. L. 100-352 (1988).

Hicks v. Miranda, 422 U.S. 332, 345, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975). Thus, this Court has already decided that a statute of repose does not violate equal protection.

The Florida statute in *Pullum* and the Oregon statute are substantially similar. The Florida statute provides that product liability actions must be brought "within 12 years after the date of delivery of the completed product to its original purchaser . . . . " West's F.S.A. § 95.031(2). Under the Oregon statute, product liability actions must be "commenced not later than eight years after the date on which the product was first purchased for use or consumption." ORS 30.905(1). By dismissing the appeal in *Pullum*, this Court has already rejected the same equal protection arguments advanced by petitioner in this case.

II.

THE OREGON SUPREME COURT DID NOT DECIDE A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISIONS OF OTHER STATE COURTS OF LAST RESORT

Petitioner relies on Supreme Court Rule 10(b) as the basis for certiorari. (Petition for Cert., p. 1.) The Oregon Supreme Court decision in this case does not decide a federal question in a way that conflicts with the decision of any state court of last resort or any federal court. The underlying claim is a product liability claim arising under state law. Tort law has historically been a matter left to state law. This Court has long recognized that the equal protection clause of the Fourteenth Amendment does not prevent state legislatures from abolishing rights recognized by the common law to attain permissible legislative

objectives. *Silver v. Silver*, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed 221 (1929).

Statutes of ultimate repose have repeatedly been upheld against claims of denial of equal protection. *See e.g. Eddings v. Volkswagenwerk, A.G.*, 835 F.2d 369 (11th Cir.), *cert. denied*, ___ U.S. ___, 109 S.Ct. 68, 102 L.Ed.2d 44 (1988); *Bowman v. Niagara Machine and Tool Works, Inc.*, 832 F.2d 1052 (7th Cir. 1987); *Kochins v. Linden-Alimak, Inc.*, 799 F.2d 1128 (6th Cir. 1986); *Daily v. New Britain Machine Co.*, 200 Conn. 562, 512 A.2d 893 (1986); *Jones v. Five Star Engineering, Inc.*, 717 S.W.2d 882 (Tenn.1986); *Tetterton v. Long Mfg. Co.*, 314 N.C. 44, 332 S.E.2d 67 (1985).

The authority Petitioner cites in support of the alleged conflict among state courts is inapposite. Petitioner fails to cite a single case which decides a federal question in a manner that conflicts with the Oregon Supreme Court decision in this case. Petitioner points to three sources which note that statutes of ultimate repose have on occasion been held to violate varying provisions of several *state* constitutions.

Petitioner contends that the concurring opinion of Justice Fadeley in the Oregon Supreme Court supports his equal protection argument. (Petition for Cert., pp. 1, 13.) Justice Fadeley's opinion, however, merely points out that many states have declared statutes of ultimate repose unconstitutional under their state constitutions. *Sealey*, 309 Or. at 402, 788 P.2d at 443 (concurring opinion of Justice Fadeley).

Petitioner suggests that *Heath v. Sears, Roebuck & Co.*, 464 A.2d 288 (N.H. 1983), demonstrates a conflict among state courts of last resort. (Petition for Cert., p. 13.)

Although *Heath* declared a statute of repose unconstitutional, the court decided the case on state constitutional grounds. 464 A.2d at 295.

Finally, Petitioner cites "405 ALR 4th 461 which sets forth the particulars of the diversity between [sic] the states on this issue." (Petition for Cert., p. 13.) Petitioner is apparently referring to Annotation, Validity and Construction of Statute Terminating Right of Action for Product-Caused Injury at Fixed Period after Manufacture, Sale, or Delivery, 25 A.L.R. 4th 641 (1983). However, this annotation cites no cases which have held a statute of ultimate repose invalid under the United States Constitution. All of the cases cited which invalidated such statutes were decided under state constitutions. The present case does not present a conflict with the decisions of other state courts of last resort.

III.

THE OREGON SUPREME COURT CORRECTLY DECIDED THAT ORS 30.905 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

The Oregon Supreme Court applied a proper equal protection analysis to the facts of this case. This Court has stated that:

> In the absence of a classification that is inherently invidious or that impinges upon fundamental rights, a state statute is to be upheld against equal protection attack if it is rationally related to the achievement of legitimate governmental ends. *Schweiker v. Wilson*, 450 U.S. 221, 230, 101 S.Ct. 1074, 1080, 67 L.Ed.2d 186 (1981).

G.D. Searle & Co. v. Cohn, 455 U.S. 404, 409, 102 S.Ct. 1137, 1141, 71 L.Ed.2d 250 (1982). The statute at issue here, ORS 30.905, involves neither a suspect class nor a fundamental right; it merely establishes a time limit for product liability lawsuits. The correct level of scrutiny, therefore, is the "rational relationship" test as set forth in *G.D. Searle*. That is the test the Oregon Supreme Court applied. *Sealey*, 309 Or. at 398, 788 P.2d 441. The Oregon Supreme Court correctly held that the statute of repose is rationally related to legitimate governmental ends. *Id.* One legislative rationale for enacting a statute of repose is to give manufacturers " . . . the benefit of a limited and predictable time period during which they would be exposed to liability for defects that existed when a product left a respective party's hands." *Erickson Air-Crane Co. v. United Technologies Corp.*, 303 Or. 281, 188, 735 P.2d 614, 617, *on reconsideration*, 303 Or. 452, 736 P.2d 1023, *on remand*, 87 Or. App. 577, 743 P.2d 747, *rev. denied*, 304 Or. 680, 748 P.2d 142 (1987). Another rationale is to protect sellers from claims which may be impossible to defend because of the lack of available or reliable evidence after a long lapse of time. *See Johnson v. Star Machinery*, 270 Or. 694, 701, 530 P.2d 53, 56 (1974) (applying ORS 12.115(1), the negligence statute of ultimate repose, to product liability actions). ORS 30.905 is rationally related to both of these legitimate goals and thus does not violate the equal protection clause of the Fourteenth Amendment.

IV.

PETITIONER HAS CITED NO GROUNDS FOR CERTIORARI JURISDICTION OVER HIS SEVENTH AMENDMENT CLAIM

Petitioner asks this Court to decide whether ORS 30.905 violates the Seventh Amendment right to jury trial.

(Petition for Cert., p. 14.) However, petitioner fails to demonstrate a conflict among state or federal courts on this issue.

Moreover, this case does not present a federal question with regard to the right to jury trial. This case was brought in a state court, not a federal court. The Seventh Amendment protects the right to jury trial only in "any court of the United States." U.S. Const. Amend. VII. The Seventh Amendment right to jury trial has not been held to apply to the state courts through the Fourteenth Amendment. *Curtis v. Loether*, 415 U.S. 189, 192 n.6, 94 S.Ct. 1005, 1007 n.6, 39 L.Ed.2d 260 (1974). Consequently, other courts have held that the right to jury trial in civil actions in state court is a matter of state law. *Wartman v. Branch 7, Civ. D., Cty. Ct., Milwaukee Cty., Wisc.*, 510 F.2d 130, 134 (7th Cir. 1975); *Coeur d'Alene Lakeshore v. Kootenai County*, 104 Idaho 590, 661 P.2d 756, 762 (1983).

Finally, the statute does not deprive petitioner of the right to a jury trial. It merely provides that eight years after sale, all product liability claims are barred. The Oregon Supreme Court correctly recognized that such a statute does not deprive the plaintiff of a right to trial by jury; it simply declares that no claim exists. 309 Or. at 398, 788 P.2d at 441. Petitioner could not be deprived of a jury trial when he had no claim to be tried.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

30.900 "Product liability civil action" defined. As used in ORS 30.900 to 30.920, "product liability civil action" means a civil action brought against a manufacturer, distributor, seller or lessor of a product for damages for personal injury, death or property damage arising out of:

(1) Any design, inspection, testing, manufacturing or other defect in a product;

(2) Any failure to warn regarding a product; or

(3) Any failure to properly instruct in the use of a product.

30.905. (1) Notwithstanding ORS 12.115 or 12.140 and except as provided in subsections (2) and (3) of this section, a product liability civil action shall be commenced not later than eight years after the date on which the product was first purchased for use or consumption.

(2) Except as provided in subsection (3) of this section, a product liability civil action shall be commenced not later than two years after the date on which the death, injury or damage complained of occurs.

(3) A product liability civil action for damages resulting from asbestos-related disease shall be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the disease and the cause thereof.

(4) Subsection (3) of this section shall apply to all causes of action which are tried after the effective date of this legislation.